

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office September 15, 2009, claims 1-4 and 6-19 were rejected under 35 U.S.C. 102(b) as being anticipated by Munson (US 3,934,084). Accordingly, Applicant respectfully provides the following:

Rejection under 35 U.S.C. 102

Claims 1-19 were rejected under 35 U.S.C. 102(b) as being anticipated by Munson et al. (U.S. 3,934,084). M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. "To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131 states further,

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... "The identical invention must be shown in as complete detail as is contained in the...claim.

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits Munson does not teach every element of the claim set as provided herein. Accordingly, Applicant respectfully traverses this rejection.

In particular, Independent claims 1, 11 and 18 are drawn to an ambient noise monitoring device comprising a processing element structured to automatically obtain and record ambient noise values over time to create a temporal ambient noise map, wherein said ambient noise monitoring device iteratively records an ambient noise value corresponding to a time value, which may then average the ambient noise values obtained for select time values and correlate an average ambient noise value to each time value effectively creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of predetermined average ambient

noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun; and an audio output component for receiving information corresponding to said temporal ambient noise map and using such information to produced and maintain a volume level relatively greater than the average ambient noise values recorded on the temporal ambient noise map for each time value, wherein the audio output device may respond to predicted ambient noise levels such that information broadcast therefrom may be perceived without undue interference from ambient noise. Munson fails to teach this aspect of the claimed invention.

The current claim set recites limitations for an ambient noise monitoring device structured to create a temporal ambient noise map. The ambient noise map is produced by monitoring ambient noise levels iteratively over discrete time periods and averaging the ambient noise values obtained through the select time values. Accordingly, the claimed temporal ambient noise map comprises a plurality of pre-determined average ambient noise values corresponding to plurality of discrete time periods collected before audio output adjustment has begun.

Munson fails to teach the acquisition of ambient noise values at discrete iterative time periods to produce a temporal ambient noise map prior to operation. Rather, Munson discloses a system that reacts to current ambient noise values without regard to an ambient noise map. Munson discloses an audio amplifier system with a variable gain amplifier adapted to receive an input signal and a means for detecting when the input signal falls below a predetermined level to provide a signal proportionate to the sound level with an inhibitor arranged to prevent any change of the gain amplifier except during periods with the input signal falls below the predetermined levels. Munson, abstract.

Munson indicated that its disclosed invention was produced to mitigate problems associated with systems that were designed to monitor ambient noise levels and deliver output signals proportional to the noise levels in store at any given time. Munson proposed overcoming issues associated with prior art systems by providing an amplifier system that comprised an inhibitor means controlled by a detecting means to prevent the change gain of the variable gain amplifier except during periods of time when the input signal falls below a predetermined level. Munson, Col. 1, Lines 16-45. Accordingly, Munson provides for a variable gain amplifier controlled by an inhibitor which prevents the change of gain of the variable gain amplifier except during periods of time when an input signal falls below a predetermined level. Munson's variable gain amplifier allows output levels to compensate for changing levels of ambient background noise so that the music or speech amplification is increased in noisy backgrounds and decreased in quiet backgrounds. Munson, Col. 3, Lines 7-13.

However, Munson fails to disclose a system which is structured to automatically obtain and record ambient noise values over time to create a temporal ambient noise map wherein said ambient noise monitoring device iteratively records an ambient noise value corresponding to a time value, which may then be averaged to obtain ambient noise values for select time values and correlate an average ambient noise values for each time effectively creating a temporal ambient noise map. Each of independent claims 1, 11, and 18 contain limitations for a temporal ambient noise map comprising the plurality of predetermined average ambient noise values corresponding to a plurality of discrete time periods being collected before audio output adjustment has begun and for producing an output relatively greater than the average ambient noise values recorded on the temporal ambient noise map for each time value. By way of contra distinction, Munson teaches a temporal volume control device with a variable gain amplifier

associated with an inhibitor means to produce a consistent output signal except for times when the signal falls below a predetermined level. Because Munson fails to teach each and every element except for in independent claims 1, 11, and 18, Munson fails to anticipate each of independent claims 1, 11, and 18. Accordingly, Applicant respectfully requests that the Section 102 rejections over Munson be withdrawn at this time.

The Examiner has rejected claims 2-10, 12-17 and 19, which each depend from claim 1, 11 and 18 under 35 U.S.C. § 102(a) as being anticipated by Munson. By virtue of their dependence from claims 1, 11 and 18, respectively, claims 2-10, 12-17 and 19 require, among other things, an ambient noise monitoring device comprising a processing element structured to automatically obtain and record ambient noise values over time to create a temporal ambient noise map, wherein said ambient noise monitoring device iteratively records an ambient noise value corresponding to a time value, which may then average the ambient noise values obtained for select time values and correlate an average ambient noise value to each time value effectively creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of predetermined average ambient noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun; and an audio output component for receiving information corresponding to said temporal ambient noise map and using such information to produced and maintain a volume level relatively greater than the average ambient noise values recorded on the temporal ambient noise map for each time value, wherein the audio output device may respond to predicted ambient noise levels such that information broadcast there from may be perceived without undue interference from ambient noise. However, the Examiner has not established the Munson teaches this limitation in combination with the other limitations of claims 2-10, 12-17 and 19. Because Munson fails to

include every element of the rejected claims, Applicant respectfully requests that the rejection of dependent claims 2-10, 12-17 and 19 be withdrawn.

For at least this reason, Applicant respectfully submits that the prior art reference does not, explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore neither anticipates nor renders obvious the claims as provided herein.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this the 15 day of December, 2009

Respectfully submitted,



Michael H. Krieger
Attorney for Applicant
Registration No. 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 321-4814
Facsimile: (801) 321-4893

JRM:law